

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6519**

**PETITION OF TOPGOLF GERMANTOWN USA LLC**

**OPINION OF THE BOARD**

(Public Hearing Date: May 24, 2017)  
(Effective Date of Opinion: June 8, 2017)

Case No. A-6519 is an application by Topgolf Germantown USA LLC for a twenty-five (25) foot variance from the 145-foot height limit established pursuant to Section 59.4.5.3.C.4 of the Zoning Ordinance. This variance is necessary to allow the construction of multiple (25) net poles needed to contain golf balls originating from the Topgolf recreation and entertainment facility being developed on the subject property. Each of the proposed net poles will be approximately 170 feet in height as measured from the lower level first floor elevation of the principal Topgolf building.

The Board of Appeals held a hearing on the application on April 26, 2017. Christopher M. Ruhlen, Esquire, appeared in support of the application on behalf of Petitioner Topgolf, along with Mark Foster, Manager for Real Estate Development with Topgolf, Tom Boerman, P.E., ARCO Murray Design/Build, and Ken Jones, Macris, Hendricks & Glascock, P.A.

Decision of the Board:                      Variance GRANTED.

**EVIDENCE PRESENTED**

1.     The property on which the proposed net poles will be located is Parcel H, Century 21 Subdivision, located at 20101 Century Boulevard, Germantown, Maryland, 20878, in the CR Zone. The Topgolf facility is being developed on this parcel and on the abutting Pt. Parcel G, Century 21 Subdivision, located at 20051 Century Boulevard. Since these parcels are being developed as a whole, they will be collectively referred to as the "property" or "subject property." The property is owned by Matan Development dba CC 118 LLC, which has consented to the filing of this variance petition. See Exhibits 1(a) and (b).

2. The subject property is bordered by Century Boulevard to the west and by the right-of-way for the Interstate 270/Maryland Route 118 access ramp to the east. There is a stormwater management pond on the northern portion of the property, and the surrounding land is developed with commercial uses, as follows:

The immediately surrounding land, which is also zoned CR, is developed with uses that are commercial in nature. More specifically, recorded parcels containing office and hotel uses are located to the north of the Property. Office uses also directly confront the Property to the west across Century Boulevard, with the Regal Cinemas complex located just beyond at the northeastern corner of Century Boulevard and Aircraft Drive. To the south are hotel and restaurant uses that utilize the existing driveway on the southern portion of the Property for access purposes.

See Exhibit 3.

3. The subject property is unusually shaped, described by counsel as having lot lines that "are generally not straight and uneven in length, resulting in an assemblage of land that resembles an irregular curved trapezoid." In addition, any development of this property for the proposed Topgolf facility will require the dedication of an additional 22 feet to 50 feet of right-of-way for Century Boulevard to accommodate the future "Corridor Cities Transitway," in accordance with the Master Plan, further "reduc[ing] the Property's width, exacerbat[ing] the Property's irregular shape, and further constrain[ing] the locations on-site where development is feasible." When measured between "the curved front and rear lines, the Property is approximately 535 feet wide at its widest point, less than the 205 yard (+/- 615 foot) distance that is needed for Topgolf's outfield." See Exhibits 3 and 4(b).

The subject property is also affected by a significant slope from east to west and from north to south, with an approximate 35 foot change in elevation. Because of this, "stormwater management facilities on the Property – including the stormwater management pond that currently serves the surrounding off-site development, which will be redesigned and reconstructed with the [Topgolf] Project – must be located in the northernmost portion of the site where elevations are lower." The irregular shape of this property, combined with the existing grade and the required location of stormwater management facilities at the lowest point on the property combine to restrict the orientation and location of the proposed recreation and entertainment facility:

As a result of these exceptional and extraordinary characteristics (*i.e.*, the Property's irregular shape and its sloping topography), the Project must be situated on a north-to-south alignment, with its stormwater management facilities and its outfield area placed near the peninsula that approaches I-270 and the adjacent office and hotel development. With this placement, the sides of the outfield run approximately parallel with Century Boulevard to the west and the highway access ramp to the east (see Figure 3 above). The limits of the outfield area approach a

minimum of only 17 feet from the nearest lot line at certain points (measured to the closest net pole).

While the Project's placement satisfies the applicable development standards of the Zoning Ordinance for the CR Zone, the golf balls that will be hit from the building's three levels will travel across the outfield in the direction of the adjacent development, Century Boulevard, and the access ramp. Given that the Property will only be marginally wider than the proposed outfield, these golf balls could potentially cross the Property's lot lines unless sufficiently tall protective netting is provided.

See Exhibit 3.

4. The requested variance is for the construction of multiple (25) net poles, each approximately 170-feet in height as measured from the lower level first floor elevation of the principal Topgolf building, which are needed in connection with the construction of the Petitioner's recreation and entertainment facility. The Topgolf facility is a permitted use in the CR Zone.<sup>1</sup> The Petitioner, in collaboration with the Calloway Golf Company, has determined the necessary height for the net poles as follows:

As shown on the Barrier Netting Analysis provided with this variance request, these studies have shown that it is possible for a golf ball hit by a proficient guest with a swing speed of 120 miles per hour to achieve a height of approximately 165 feet at a distance of approximately 200 yards (+/- 600 feet) from tee location. ... As previously stated, the outfield of the proposed Topgolf will have a depth of approximately 205 yards (+/- 615 feet). Given that some players may have even faster swing speeds than the 120 miles per hour assumed in the Barrier Netting Analysis, it is possible that some balls will achieve greater heights and distances and will potentially exceed heights of 165 feet at the end of the outfield.\* In addition, wind, weather, equipment selection, and other factors may affect the heights and distances that golf balls hit from Topgolf's decks will actually achieve in flight. Based on these factors and reasonable assumptions, Topgolf has determined that 170 feet is the minimum height necessary for the protective net poles to ensure the safety of its customers. For this Property, where the outfield area will be very close to the lot lines at certain points, 170 feet is also the minimum height necessary to prevent golf balls from being hit into adjacent properties and rights-of-way and to protect neighbors and passersby.

\* For example, as noted in the Barrier Netting Analysis, "Tiger Woods' driver swing speed has been measured at 130+ mph."

See Exhibits 3 and 5(b).

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<sup>1</sup> The Petitioner correctly notes that pursuant to Section 59-3.1.6 of the Zoning Ordinance, both Major Recreation and Entertainment Facilities (capacity over 1,000 persons) and Restaurant uses are permitted in the CR Zone.

5. The property was originally subdivided in 1982, at which time "the record lots were created with the irregular curved trapezoidal shape described above, which operates as a constraint on development of the site and contributes to the need for variance relief." The existing topography is partially the result of rough-grading done in connection with the construction of the existing stormwater management pond which serves the surrounding off-site development. See Exhibit 3.

At the hearing, Mr. Tom Boerman, P.E., testified that the property was subdivided prior to any involvement by Topgolf, and has an irregular, non-rectilinear shape, with a curved right-of-way for Century Boulevard along one side, and rights-of-way for Interstate 270 and Maryland Route 118 on the other side. He testified that these rights-of-way have set grades, and that the property falls 35 feet from east to west. Mr. Boerman testified that the topography of the subject property is due to these right-of-way elevations, and to grading that was done when the stormwater management pond was created. He testified that because the property is not wide enough (east-west) to accommodate Topgolf's requisite 205-yard outfield, the facility must be laid out in a north-south direction.

6. The subject property is located within the 2009 Approved and Adopted Germantown Employment Area Sector Plan. Per counsel for the Petitioner:

The Sector Plan places the Property at the far eastern edge of the Town Center Core neighborhood of the Town Center District. The Sector Plan recommends directing new uses, activity, and design attention to this area to, among other things, complete the economic core envisioned by the General Plan, increase employment, and organize communities around transit. More specifically, the Town Center Core is intended to have a mix of uses (including offices, restaurants, housing, and civic facilities) close to shopping, transit, and jobs. At the same time, the Sector Plan notes that the Town Center Core includes cinemas, restaurants, hotels and civic facilities that contribute significantly to Germantown's identity as the "up-County cultural center." The Sector Plan states that, by emphasizing cultural, entertainment, and street level retail uses among residential and commercial development, synergy is created among diverse use types. (See Sector Plan, Page 46). ... The proposed Project will be in keeping with the Sector Plan's recommendations ....

See Exhibit 3.

At the hearing, Mr. Boerman testified that the Topgolf building will "face" north, with a parking lot for approximately 360 cars to the south, and the outfield and stormwater management pond to the north. In response to Board questions about the need to relocate the stormwater management pond, Mr. Boerman testified that it would be relocated all around the outfield, and that they were working with the County on that, indicating that a stormwater concept plan had already been approved by the County. With respect to Master Plan compliance, Mr. Boerman testified that he had reviewed the Master Plan, and that the subject property is in the Town Center area, which calls for a mix of uses, with an emphasis on entertainment and cultural uses, and a synergy of

different use types. He testified that the proposed Topgolf facility would not impair the intent of the Master Plan, and would in fact directly benefit the goals of the Master Plan.

7. At the hearing, Mr. Mark Foster testified that the proposed Topgolf facility would have 475-500 employees who would be hired locally, and that the facility is anticipated to attract approximately 500,000 visitors per year. In response to a Board question about traffic, counsel for Topgolf stated traffic was being looked at carefully by the County, and that traffic and transportation were being reviewed by the Department of Transportation in connection with the Site Plan and Preliminary Plan Amendment reviews. He further stated that under the plan currently being reviewed by DOT, Topgolf would be required to make some improvements on Century Boulevard.

8. The proposed net poles and netting have been designed to minimize their visibility from adjacent properties and "to ensure that the accessory structures will fade into the skyline and not be overly visible from a distance." In addition, "the majority of the net poles will be located away from surrounding development on Century Boulevard and will be separated from I-270 by the intervening access ramp and associated right-of-way." Counsel for the Petitioner notes that in connection with the Site Plan and Preliminary Plan Amendment applications, the Petitioner held a pre-submission public meeting, notice of which was provided to "all adjacent and confronting property owners and to all civic and homeowners associations within one mile of the Property...." Counsel states that information regarding the proposed net poles was shared at the meeting and subsequent discussions were held with several of the immediate neighbors. He indicates that many expressed support for the proposed Topgolf facility, and that "[t]o date, no specific concerns have been expressed to the Petitioner regarding the heights of the protective net poles." See Exhibit 3.

## FINDINGS OF THE BOARD

Based on the binding testimony of Petitioner's witnesses and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the subject property has a unique, non-rectilinear shape, distinct from that of surrounding properties, and that Petitioner's description of that shape as an irregular, curved trapezoid is apt. The Board further finds that the property is narrower than a typical Topgolf driving range is long, which restricts the orientation of the

proposed range. The Board notes that assuming the Topgolf project moves forward, the irregularity of this property's shape will be further increased as additional land varying in width between 22 feet and 50 feet will have to be dedicated for the Corridor Cities Transitway.

The Board finds that this property is also encumbered by a significant grade, falling 35 feet and sloping in two directions and down towards the northern lot line to a low spot where a portion of this property is occupied by a stormwater management pond that serves the surrounding development, and must remain (in some form) on the property. When the shape and slope of this property are viewed in combination with the required stormwater management facilities, the Board finds that the result is a uniquely constrained building area which not only restricts the location of the proposed Topgolf facility, but also dictates its orientation.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner was not responsible for the subdivision of this parcel, which created its unique shape, for its slope and topography, or for the creation of the existing stormwater management pond. Thus the Board finds that unique constraints existing on this property are not the result of actions by the applicant.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the unique shape and slope of this property force an orientation of the proposed Topgolf facility such that balls will be hit in the direction of existing hotels, offices, roadways, and highway access ramps, resulting in the need for tall protective netting (and poles to support that netting) to prevent errant golf balls from leaving the property. The Petitioner has represented that the Topgolf driving range will be approximately 205 yards deep. While net poles as tall as 145 feet would be allowed on the subject property without the need for a variance, the Board finds, based on the Barrier Netting Analysis presented by the Petitioner following its work with the Callaway Golf Company, that due to the shape and topography of the subject property, and the resultant orientation of the Topgolf facility, net poles as high as 170 feet are needed to prevent golf balls from crossing property lines, since "a golf ball hit by a proficient guest with a swing speed of 120 miles per hour [could] achieve a height of approximately 165 feet at a distance of approximately 200 yards (+/- 600 feet) from tee location." See Exhibits 3 and 5(b). Thus the Board finds that the requested 25 foot height variance needed to allow net poles of up to 170 feet is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that per the testimony of Mr. Boerman and the reasons set forth in the Statement submitted with this variance application, as set forth under the Findings

of Fact, the location and operation of the proposed recreation and entertainment facility is consistent with the 2009 Approved and Adopted Germantown Employment Area Sector Plan, and that the requested variance is needed to enable that project to go forward. Thus the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the proposed net poles and netting have been designed to minimize their visibility from adjacent properties, and that "the majority of the net poles will be located away from surrounding development on Century Boulevard and will be separated from I-270 by the intervening access ramp and associated right-of-way." The Board further finds that neighboring property owners were made aware of the need for these net poles in the context of the Site Plan and Preliminary Plan Amendment application processes, as well as through this variance process, and that "[t]o date, no specific concerns have been expressed to the Petitioner regarding the heights of the protective net poles." See Exhibit 3. Based on the foregoing, the Board finds that granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of twenty-five (25) feet from the otherwise applicable height limit of 145 feet, needed to allow multiple (25) net poles to be as tall as 170 feet in height, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony of all of its witnesses and by the exhibits of record, to the extent that such testimony and evidence are referenced or relied on in this opinion.

2. The net poles shall be constructed substantially in compliance with Exhibits 4(a), 4(b), and 5(a).

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, and Stanley B. Boyd in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of June, 2017.

  
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Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.